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MARY E. D'ANDREA, CLERK  
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MICHAEL J. BUSHMAN,  
Petitioner

v.

JAKE MENDEZ, Warden,  
Respondent

:  
:  
:  
: Civil No. 1:CV-00-1230  
: (Kane, J.)  
: (Smyser, M.J.)  
:

RESPONDENT'S BRIEF OPPOSING PETITIONER'S  
OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT

This is a habeas corpus petition against the Warden of USP Allenwood by inmate Michael J. Bushman who is challenging a decision by the Parole Commission. In response to the petition, the respondent provided exhibits and arguments to establish that Bushman is not entitled to habeas corpus relief.

On October 4, 2000, the Magistrate Judge issued a Report recommending that the petition for writ of habeas corpus be denied and the case closed. Specifically, the Magistrate Judge concluded that: (1) 18 U.S.C. §4208 did not require the Commission to hold another statutory interim hearing after it already determined that Bushman would be released; (2) the Commission had a rational basis for determining that petitioner's offense behavior included the distribution of more than 18.75 kilograms of cocaine and concomitantly that his offense severity be rated a Category Eight; (3) the Commission clearly provided petitioner with an adequate

statement of reasons for its decision; (4) the Commission had a rational basis in the record to justify a decision for more than 48 months above the lower limits of the Category Eight guidelines; (5) there is no basis for the Court to review the Commission's exercise of discretion; (6) although there is no indication that the Commission used "arson" as a basis for its decision, the Commission is entitled to consider evidence of offenses which were charged in dismissed counts; (7) the Commission clearly explained to petitioner that it has credited him with the time he will serve on his ten-year non-parolable sentence; and (8) even if petitioner had identified any co-defendant who received a disparate decision from the Commission, he does not have a right to a parole release date identical to that of a co-defendant.

Bushman has now filed objections to the Magistrate Judge's Report, stating again that he was improperly held accountable for 18.75 kgs. or more of cocaine. (Objections at 1.) He also claims the Magistrate Judge erred in holding that the PSI supports a Category Eight offense severity rating, again claiming the 18.75 kilograms is not corroborated in the record. (Id. at 2.) However, as noted by the Magistrate Judge, the PSI clearly supports Bushman's distribution of more than 18.75 kilograms of cocaine. (See Report and Recommendation at 10; Respondent's Exhibit 1.) Moreover, since it appeared to the Magistrate Judge that Bushman never challenged any of the factual assertions of the PSI after being given an opportunity to review it prior to sentencing-and

Bushman does not dispute this finding--the Commission was entitled to assume the factual information of the PSI was correct. (Report and Recommendation at 10-11.)

Bushman also alleges that the Magistrate Judge erred in his belief that there was no co-defendant disparity in this case and now identifies a co-defendant in support of his argument. However, Bushman does not challenge the Magistrate Judge's conclusion that he is not entitled to the same parole release date as a co-defendant.

In that Bushman has not offered any new legal arguments or otherwise demonstrated any error, the respondent incorporates by reference his response to the show cause order in support of the Report and Recommendation. Accordingly, the respondent requests this Court to overrule petitioner's objections and to adopt the October 4, 2000, Report and Recommendation of the Magistrate Judge.

Respectfully submitted,

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Date: November 6, 2000

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL J. BUSHMAN, :  
Petitioner :  
 :  
v. : Civil No. 1:CV-00-1230  
 : (Kane, J.)  
JAKE MENDEZ, Warden, : (Smyser, M.J.)  
Respondent :

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on November 6, 2000, she served a copy of the attached

RESPONDENT'S BRIEF OPPOSING PETITIONER'S  
OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

Michael J. Bushman  
Reg. No. 22758-083  
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White Deer, PA 17887

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